

EXHIBIT "E"

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF KERN – METRO DIVISION**

10
11 ANGELA P. SPEGAL, an individual;
12 and KRISTOPHER G. HAIL, an
individual,

CASE NO.: BCV-20-100311

13 Plaintiffs,

**FCA US LLC'S ANSWER TO COMPLAINT;
DEMAND FOR JURY TRIAL**

14 vs.

15 CJM AUTOMOTIVE GROUP, INC., a
California Corporation; FCA US LLC, a
16 Delaware Limited Liability Company;
and DOES 1 through 75, inclusive.

Action Filed: January 31, 2020
Trial: None

17 Defendants.

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19 Defendant FCA US LLC ("FCA US"), for itself alone and for no other parties,
20 hereby answers Plaintiffs Angela P. Spegal and Kristopher G. Hail ("Plaintiffs")
21 Complaint ("Complaint") as follows:

22 **GENERAL DENIAL**

23 Under the provisions of section 431.30(d) of the California Code of Civil
24 Procedure, FCA US denies each and every allegation, both specifically and generally,
25 of each cause of action contained in Plaintiffs' Complaint on file herein, and the whole
26 thereof, and denies that Plaintiffs were damaged in any sum or sums, or at all.

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FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

1. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against FCA US.

SECOND AFFIRMATIVE DEFENSE

(Duration of Implied Warranty – New Vehicle)

2. The duration of the implied warranty is three months for a used good.

Civil Code § 1795.5(c).

THIRD AFFIRMATIVE DEFENSE

(Subject Vehicle Fit for its Intended Purpose)

3. FCA US is informed and believes, and on that basis alleges that the subject 2015 Jeep Wrangler Unlimited, VIN: 1C4HJWDGXFL554230 was fit for providing transportation at all relevant times hereto. Accordingly, Plaintiffs are not entitled to relief for breach of the implied warranty of merchantability. (*American Suzuki Motor Corporation v. Superior Court* (1995) 37 Cal.App.4th 1291.)

FOURTH AFFIRMATIVE DEFENSE

(No Timely Revocation)

4. Plaintiffs have no restitution remedy under breach of implied warranty because there was no timely revocation of acceptance after the alleged breach and before a substantial change in the condition of the goods.

FIFTH AFFIRMATIVE DEFENSE

(Unreasonable or Unauthorized Use)

5. FCA US is informed and believes some of Plaintiffs' concerns may have been caused by unreasonable or unauthorized use. (Civil Code § 1794.3.)

SIXTH AFFIRMATIVE DEFENSE

(Misuse, Abuse, Improper Maintenance, or Other Exclusion)

6. FCA US is informed and believes, and on that basis alleges, that Plaintiffs and/or others misused, abused and improperly cared for and maintained the subject

1 2015 Jeep Wrangler Unlimited, therefore, some or all of Plaintiffs' nonconformities were
2 or should have been excluded from coverage. Specifically, FCA US alleges that after
3 appropriate discovery, one or more of the stated specific warranty exclusions may be
4 applicable.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 **(Good Faith Evaluation)**

7 7. FCA US is informed and believes, and on that basis alleges, at all times,
8 FCA's evaluation of Plaintiffs' repurchase request has been in good faith, consequently,
9 Plaintiffs have no claim for civil penalty for any alleged willful violation.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 **(EstoppeL, Laches, and/or Lack of Good Faith)**

12 8. FCA US is informed and believes some or all of Plaintiffs' claims may be
13 barred by estoppel, laches and/or lack of good faith.

14 **NINTH AFFIRMATIVE DEFENSE**

15 **(Civil Code section 1794(e)(3))**

16 9. FCA US is informed and believes, and on that basis, alleges that Plaintiffs
17 failed to provide written notice under Civil Code section 1794, subdivision (e)(3), and
18 therefore, Plaintiffs' civil penalty claim is barred.

19 **TENTH AFFIRMATIVE DEFENSE**

20 **(Statute of Limitations)**

21 10. FCA US is informed and believes, and on that basis, alleges, that the
22 Complaint, and each cause of action thereof, is barred by application of the statutes of
23 limitation set forth in the Code of Civil Procedure §§ 337, 338, 339, 340, Commercial
24 Code § 2725, or any other statute of limitation applicable to the present action.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Failure to Maintain)**

27 11. FCA US is informed and believes, and on that basis alleges that Plaintiffs
28 are precluded from recovery by reason of their failure to maintain and service the

1 subject vehicle.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 **(No Substantial Impairment)**

4 12. FCA US is informed and believes, and on that basis alleges that none of
5 the alleged nonconformities claimed by Plaintiffs substantially impaired the subject
6 vehicle's use, value, or safety.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(No Breach of Express Warranty)**

9 13. FCA US is informed and believes, and on that basis alleges that any and
10 all obligations of FCA US under any applicable warranty was completely performed and
11 fulfilled.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 **(Failure to Use Third-Party Dispute Resolution)**

14 14. FCA US makes available a qualified third-party dispute resolution process,
15 and therefore, it is entitled to relief under certain provisions of the Song-Beverly
16 Consumer Warranty Act.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Responsibility of Third Party)**

19 15. FCA US is informed and believes, and on that basis alleges, that if
20 Plaintiffs are entitled to any recovery at all (and Plaintiffs are not), the amount of that
21 recovery should be reduced in whole or in part by the acts or omissions of third persons
22 over which FCA US had no oversight or control.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 **(Unclean Hands)**

25 16. FCA US is informed and believes, and on that basis alleges, that Plaintiffs'
26 claims against FCA US are barred by the doctrine of unclean hands.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Plaintiffs Waived the Right to Rescind the Contract)

17. FCA US is informed and believes, and on that basis alleges, that Plaintiffs have received and accepted the benefits under the contract and therefore have waived the right to rescind the contract.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Apportionment of Fault)

18. FCA US is informed and believes, and on that basis alleges, that the negligent acts or wrongful conduct of other persons caused Plaintiffs' damages, solely or in part, such that Plaintiffs' damages should be apportioned among the responsible parties.

NINETEENTH AFFIRMATIVE DEFENSE

(No Representation Beyond Express Warranty)

19. FCA US is informed and believes, and on that basis alleges, that it did not represent to Plaintiffs that the subject vehicle had characteristics and benefits it did not have and/or that its express warranty conferred or involved remedies or obligations it did not have.

TWENTIETH AFFIRMATIVE DEFENSE

(Requisite Repair Attempts)

20. FCA US is informed and believes, and on that basis alleges, that the subject vehicle has not been out of service the requisite number of days or subject to repair for the same nonconformity the requisite number of times within eighteen months from delivery to Plaintiffs or the accrual of 18,000 miles on the odometer.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Mitigation of Damages)

21. FCA US is informed and believes, and on that basis alleges, that Plaintiffs have made no effort to attempt to mitigate any damages or protect the value of the subject vehicle, and as such, any damages awarded would be reduced accordingly.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Set Off)

22. FCA US is informed and believes, and on that basis alleges, that if it is established that FCA US is in any manner legally responsible for any of the damages claimed by Plaintiffs, which is denied, FCA US is entitled to a set off these damages, if any, that resulted from the wrongful acts of Plaintiffs and/or others.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Complete Performance)

23. FCA US is informed and believes, and on that basis alleges, that it did not represent to Plaintiffs that the subject vehicle had characteristics and benefits it did not have and/or that its express warranty conferred or involved remedies or obligations it did not have.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Spoliation of Evidence)

24. FCA US is informed and believes, and on that basis alleges, that the subject vehicle or products identified in the Complaint that was allegedly designed, manufactured, and distributed by FCA US are missing, have been modified or altered and/or are no longer available for FCA US's possession, which impacts FCA US's defense in this case. FCA US is therefore entitled to relief from this spoliation, including appropriate jury instructions, admonitions and any other relief affiliated by the Court.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Economic Loss Rule)

25. Plaintiffs' causes of action have not accrued because Plaintiffs cannot establish that they suffered injury directly from the subject vehicle or any of its component parts, and therefore Plaintiffs' contentions that the subject vehicle or products failed to adequately perform their functions are barred by the economic loss rule.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Compliance With Laws)

26. FCA US has complied with all laws and regulations with regard to the subject matter of Plaintiffs' Complaint, are therefore not liable to Plaintiffs for any damages they may have sustained, if any.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Fees and Costs)

27. FCA US is informed and believes, and on that basis alleges, that the Complaint was brought without reasonable cause and without a good faith belief that there was a justifiable controversy under the facts or the law which warranted the filing of the Complaint against defendant. Plaintiffs should therefore be responsible for all of FCA US's necessary and reasonable attorney's fees and defense costs as permitted by California law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Modification of Property)

28. FCA US is informed and believes, and on that basis alleges, that at the time and place of the incident alleges that any and all events, occurrences, injuries and damages, if any, alleged by Plaintiff was proximately caused or contributed to by the product(s) in question having been used in a non-intended or abnormal manner, and not as a result of any defects in or failure of said product(s) or any component thereof.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Improper Forum)

29. FCA US alleges that this claim has been filed in an improper forum, as Plaintiff has agreed to arbitrate this dispute when they signed the sales agreement with the dealer.

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THIRTIETH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

30. FCA US reserves its rights to raise and plead additional defenses and/or affirmative defenses which might become known during the course of discovery, as well as to dismiss any defenses which, as a result of discovery, are determined to be unsupported by good faith reliance upon either the facts or the law, or a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

WHEREFORE, Defendant FCA US, prays as follows:

- a. For dismissal of Plaintiffs' Complaint with prejudice;
- b. For judgment in favor of Defendant FCA US, against Plaintiffs;
- c. For the costs of suit herein; and,
- d. For such other and further relief as the Court may deem just and proper.

DATED: March 9, 2020

BOWMAN AND BROOKE LLP

By:

Richard L. Stuhlbarg
Garrett B. Stanton
Attorneys for Defendant,
FCA US LLC

DEMAND FOR JURY TRIAL

Defendant FCA US LLC hereby demands a trial by jury.

DATED: March 9, 2020

BOWMAN AND BROOKE LLP

BY:

Richard L. Stuhlbarg
Garrett B. Stanton
Attorneys for Defendant,
FCA US LLC